NOTIFICATION.

(LAW DEPARTMENT).

No LAW 116 LCA 62, dated Bangalore, the 14th December 1962

Ordered that the Report of the Joint Committee on the Specific Relief Bill, 1962 (55B of 1962), which has been published in the *Gazette of India*, Extraordinary, Part II, Section 2, dated the 10th November 1962, be republished in the *Mysore Gazette*, for general information

By Order and in the name of the Governor of Mysore,

23 S. SRIPADARAJ, *Under Secy. to Govt., L.D*

LOK SABHA.

The following Report of the Joint Committee on the Bill to define and amend the law relating to certain kinds of specific relief was presented to Lok Sabha on the 10th November, 1962

Composition of the Joint Committee

Lok Sabha

Shri Asoke K Sen—*Chairman.*

MEMBERS

2 Dr M S. Aney
3 Shri Brij Basi Lal
4 Shri Brij Raj Singh-Kotah
5 Shri Chattar Singh
6 Shrimati Zohraben Akbarbhai Chavda
7 Shri C M Chawdhary
8 Shri B K Dhaon
9 Shri N R Ghosh
10 Shri Abdul Ghani Goni
11 Shri Harish Chandra Heda
12 Shrimati Jamuna Devi
13 Shri Gulabrao Keshavrao Jedhe
14 Shri Yogendra Jha
15 Pandit Jwala Prasad Jyotishi
16 Shri Nihar Ranjan Laskar
17 Shri Masuriya Din

18 Shri Bibudhendra Misra
19 Shri David Munzni
20 Shri D. D. Puri
21 Shri A V. Raghavan
22 Swami Rameshwaranand
23 Shri R V Reddiar
24 Shri A T. Sarma
25 Shri S M. Siddiah
26 Shri K K Singh
27 Shri Krishnapal Singh
28 Dr L. M. Singhvi
29 Shri R Umanath
30 Shri P. Venkatasubbaiah.

Rajya Sabha

31 Shri R. M. Deshmukh
32 Dr Shrimati Seeta Parmanand
33 Shri G S Pathak
34 Shri Jagan Nath Kaushal
35 Shri Mahesh Saran
36 Shri S. C. Deb
37 Shri C D Pande
38 Shri B D. Khobaragade
39 Shri M. N Govindan Nair
40 Shri M. S Gurupadaswamy
41 Shri Kamta Singh
42 Shri J. Sivashanmugam Pillai
43 Shri Krishan Dutt
44 Shri K S Ramaswamy
45 Shri Vimalkumar M. Chordia

DRAFTSMEN

1 Shri G. R Rajagopaul, *Special Secretary, Ministry of Law and Member, Law Commission of India.*
2 Shri R V S Peri Sastry, *Assistant Draftsman, Ministry of Law*

SECRETARIAT.

Shri A L Rai—*Deputy Secretary*

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* to define and amend the law relating to certain kinds of specific relief was referred, having been authorised to submit the report on their behalf, present this their Report with the Bill as amended by the Committee annexed thereto

2 The Bill was introduced in Lok Sabha on the 13th June, 1962 The motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri Bibudhendra Misra, Deputy Minister in the Ministry of Law on the 9th August, 1962 and was discussed and adopted on the same day.

3 The Rajya Sabha discussed the motion on the 21st August, 1962 and concurred in the said motion on the same day

4 The message from Rajya Sabha was read out to Lok Sabha on the 22nd August, 1962

5 The Committee held four sittings in all

6 The first sitting of the Committee was held on the 5th September, 1962, to draw up their programme of work.

7. The Committee considered the Bill clause by clause at their sittings held on the 31st October, 1st and 9th November, 1962

8 *Clause* 6 (*new*). In the opinion of the Committee, section 9 of the Specific Relief Act, 1877, provides a summary, cheap and useful remedy to a person dispossessed of immovable property otherwise than in due course of law and has not given rise to any difficulty in its working so far It has the effect of discouraging people from taking the law into their own hands Consequently, after going anxious consideration to the recommendation of the Law Commission for its omission, the Committee have come to the conclusion that section 9 should be restored. The new clause 6 seeks to re-introduce with drafting changes section

* Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 15th June, 1962.

9 of the existing Act. At the same time the provision as to limitation contained in article 3 of the existing Limitation Act has been suitably incorporated in this new clause.

The remaining clauses have been re-numbered accordingly.

9. The Committee do not consider any other amendment necessary in the Bill.

10. The Committee considered and adopted their report at their sitting held on the 9th November, 1962.

11. The Committee recommend that the Bill as amended be passed.

NEW DELHI,
The 9th November, 1962

ASOKE K SEN,
Chairman,
Joint Committee.

Minute of Dissent

वीधयक की धारा ९ अनावश्यक है । कारण उक्त धारा के नहीं होने पर भी बचाव पक्ष को अपना बचाव पक्ष प्रस्तुत कर समर्थन करने मे किसी तरह की वैधानिक आपत्ति नहीं आ सकती है ।

विमल कुमार चोरडिया

नई दिल्ली,
९ नवम्बर, १९६२ ।

Bill No. 55B of 1962

THE SPECIFIC RELIEF BILL, 1962.

(AS REPORTED BY JOINT COMMITTEE)

(Words underlined or sidelined indicate the amendments suggested by the Committee)

A

BILL

to define and amend the law relating to certain kinds of specific relief

BE IT enacted by Parliament in the Thirteenth Year of the Republic of India as follows —

PART I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Specific Relief Act, 1962

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "obligation" includes every duty enforceable by law,

(*b*) "settlement" means an instrument (other than a will or codicil as defined by the Indian Succession Act, 1925, (39 of 1925),) whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of,

(*c*) "trust" has the same meaning as in section 3 of the Indian Trusts Act, 1882 (2 of 1882), and includes an obligation in the nature of a trust within the meaning of Chapter IX of that Act,

(*d*) "trustee" includes every person holding property in trust,

(*e*) all other words and expressions used herein but not defined, and defined in the Indian Contract Act, 1872 (9 of 1872), have the meanings respectively assigned to them in that Act.

3. Savings.—Except as otherwise provided herein, nothing in this Act shall be deemed—

(*a*) to deprive any person of any right to relief, other than specific performance, which he may have under any contract, or

(*b*) to affect the operation of the Indian Registration Act, 1908 (16 of 1908), on documents.

4 Specific relief to be granted only for enforcing individual civil rights and not for enforcing penal laws.—Specific relief can be granted only for the purpose of enforcing individual civil rights and not for the mere purpose of enforcing a penal law.

PART II.

SPECIFIC RELIEF

CHAPTER I

RECOVERING POSSESSION OF PROPERTY

5. Recovery of specific immovable property—A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908 (5 of 1908).

6 Suit by person dispossessed of immovable property.—(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought—

(*a*) after the expiry of six months from the date of dispossession, or

(*b*) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possesion thereof

7. Recovery of specific movable property—A person entitled to the possession of specific movable property may recover it in the manner provided by the Code of Civil Procedure, 1908 (5 of 1908).

Explanation 1.—A trustee may sue under this section for the possession of movable property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2.—A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.

8. Liability of person in possession, not as owner to deliver to persons entitled to immediate possession.—Any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:—

(*a*) when the thing claimed is held by the defendant as the agent or trustee of the pliantiff,

(*b*) when compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed ;

(*c*) when it would be extremely difficult to ascertain the actual damage caused by its loss ,

(*d*) when the possession of the thing claimed has been wrongfully transferred from the plaintiff

Explanation —Unless and until the contrary is proved, the court shall, in respect of any article of movable property claimed under clause (*b*) or clause (*c*) of this section, presume—

(*a*) that compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed, or, as the case may be,

(*b*) that it would be extremely difficult to ascertain the actual damage caused by its loss

CHAPTER II

SPECIFIC PERFORMANCE OF CONTRACTS

9. Defences respecting suits for relief based on Contract.— Except as otherwise provided herein, where any relief is claimed under this Chapter in respect of a contract, the person against whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts

CONTRACTS WHICH CAN BE SPECIFICALLY ENFORCED

10. Cases in which specific Performance of contract enforceable.—Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced—

(*a*) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done , or

(*b*) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.

Explanation.—Unless and until the contrary is proved, the court shall presume—

(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money, and

(ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases —

(*a*) where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market,

(b) where the property is held by the defendent or the agent or trustee of the plaintiff.

11. Cases in which specific performance of contracts connected with trusts enforceable.—(1) Except as otherwise provided in this Act, specific performance of a contract may, in the discretion of the court, be enforced when the act agreed to be done is in the performance wholly or partly of a trust.

(2) A contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced.

12 Specific performance of part of contract.—(1) Except as otherwise hereinafter provided in this section, the court shall not direct the specific performance of a part of a contract.

(2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—

(a) forms a considerable part of the whole, though admitting of compensation in money; or

(b) does not admit of compensation in money,

he is not entitled to obtain a decree for specific performance, but the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party—

(i) in case falling under clause (*a*), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case following under clause (*b*), the consideration for the whole of the contract without any abatement, and

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

(4) When a part of a contract which, taken by itself can and ought to be specifically performed stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.

Explanation.—For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject-matter existing at the date of the contract has ceased to exist at the time of its performance.

13. Rights of purchaser or lessee against person with no title or imperfect title.—(1) Where a person contracts to sell or let

certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights namely.—

(a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest,

(b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to Procure such conveyance;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and where necessary, also a conveyance from the mortgagee;

(*d*) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs, on the interest, if any, of the vendor or lessor in the property which is the subject-matter of the contract

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property

CONTRACTS WHICH CANNOT BE SPECIFICALLY ENFORCED

14 Contracts not specifically enforceable — (1) The following contracts cannot be specifically enforced, namely —

(*a*) a contract for the non-performance of which compensation in money is an adequate relief,

(*b*) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such that the court cannot enforce specific performance of its material terms,

(*c*) a contract which is in its nature determinable,

(*d*) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

(2) Save as provided by the Arbitration Act, 1940, (10 of 1940) no contract to refer present or future differences to arbitration shall be specifically enforced, but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which hehas contracted to refer, the existence of such contract shall bar the suit.

(3) Notwithstanding anything contained in clause (*a*) or clause (*c*) or clause (*d*) of sub-section (1), the court may enforce specific performance in the following cases —

(*a*) where the suit is for the enforcement of contract,—

(*i*) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once.

Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract, or

(*ii*) to take up and pay for any debentures of a company,

(*b*) where the suit is for,—

(*i*) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership, or

(*ii*) the purchase of a share of a partner in a firm,

(*c*) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land

Provided that the following conditions are fulfilled, namely.—

(i) the building or other work is discribed in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work,

(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief, and

(iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.

PERSONS FOR OR AGAINST WHOM CONTRACTS MAY BE SPECIFICALLY ENFORCED

15. Who may obtain specific performance. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

(a) any party thereto;

(b) the representative in interest or the principal, of any party thereto:

Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient

in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;

(*c*) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder,

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman,

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant,

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach,

(g) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation,

(*h*) when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company

Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

16. Personal bars to relief —Specific performance of a contract cannot be enforced in favour of a person—

(*a*) who would not be entitled to recover compensation for its breach, or

(*b*) who has become incapable of performing, or violates any essential term of, the contract that on his part

remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract, or

(*c*) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (*c*),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court,

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

17. Contract to sell or let property by one who has no title, not specifically enforceable.—(1) A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor—

(*a*) who, knowing himself not to have any title to the property, has contracted to sell or let the property,

(*b*) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.

18. Non-enforcement except with variation.—Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff

cannot obtain the performance sought, except with the variation so set up, in the following cases, namely —

(*a*) where by fraud, mistake of fact or mis-representation, the written contract of which performance is sought is in its terms or effect different from what the parties agreed to, or does not contain all the terms agreed to between the parties on the basis of which the defendant entered into the contract,

(*b*) where the object of the parties was to produce a certain legal result which the contract as framed is not calculated to produce,

(*c*) where the parties have, subsequently to the execution of the contract, varied its terms.

19. Relief against parties and persons claiming under them by subsequent title.—Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(*a*) either party thereto,

(*b*) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract,

(*c*) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant,

(*d*) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation,

(*e*) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

DISCRETION AND POWERS OF COURT

20. Discretion as to decreeing specific performance.—(1) The jurisdiction to decree specific performance is discretionery, and the court is not bound to grant such relief merely because it is lawfull to do so, but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance—

(*a*) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant, or

(*b*) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff,

(*c*) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance

Explanation 1—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (*b*)

Explanation 2—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.

21. Power to award compensation in certain cases.—(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.

(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872)

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint

Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation.—The circumstances that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.

22. Power to grant relief for possession, partition, refund of earnest money, etc.—(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908) any person suing for the specific performance of a contract for the tranfer of immovable property may, in an appropriate case, ask for—

(*a*) possession, or partition and separate possession of the property, in addition to such performance, or

(*b*) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made to him, in case his claim for specific performance is refused.

(2) No relief under clause (*a*) or clause (*b*) of sub-section (1) shall be granted by the court unless it has been specifically claimed

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under Section **21.**

23. Liquidation of damages not a bar to specific performance—(1) A contract, otherwise proper to be specifically enforced, may be so enforced, though a sum be named in it as the amount to be paid in case of its breach and the party in default is willing to pay the same, if the court, having regard to the terms of the contract and other attending circumstances, is satisfied that the sum was named only for the purpose of securing performance of the contract and not for the purpose of giving to the party in default an option of paying money in lieu of specific performance.

(2) When enforcing specific performance under this section, the court shall not also decree payment of the sum so named in the contract.

24 Bar of suit for compensation for breach after dismissal of suit for specific performance.—The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be, but shall not bar his right to sue for any other relief to which he may be entitled, by reason of such breach.

ENFORCEMENT OF AWARDS AND DIRECTIONS TO EXECUTE SETTLEMENTS

25. Application of preceding sections to certain awards and testamentary directions to execute settlements.—The provisions of this Chapter as to contracts shall apply to awards to which the Arbitration Act, 1940, (10 of 1940.) does not apply and to directions in a will or codicil to execute a particular settlement.

CHAPTER III

RECTIFICATION OF INSTRUMENTS

26 When instrument may be rectified –(1)When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing (not being the articles of association of a company to which the Companies Act, 1956, (1 of 1956) applies) does not express their real intention, then—

(*a*) either party or his representative in interest may institute a suit to have the instrument rectified ; or

(*b*) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified , or

(*c*) a defendant in any such suit as is referred to in clause (*b*), may, in addition to any other defence open to him, ask for rectification of the instrument

(2) If, in any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.

(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed

Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms asmay be just for including such claim.

CHAPTER IV

Rescission of contracts

27. When rescission may be adjudged or refused — (1) Any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the court in any of the following cases, namely —

(*a*) where the contract is voidable or terminable by the plaintiff ·

(*b*) where the contract is unlawful for causes not apparent on its face and the defendent is more to blame than the plaintiff

(2) Notwithstanding anything contained in sub-section (1), the court may refuse to rescind the contract—

(*a*) where the plaintiff has expressly or impliedly ratified the contract, or

(*b*) where, owing to the change of circumstances which has taken place since the making of the contract (not being due to any act of the defendant himself), the parties cannot be substantially restored to the position in which they stood when the contract was made, or

(*c*) where third parties have, during the subsistence of the contract, acquired rights in good faith without notice and for value, or

(*d*) where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract.

Explanation.—In this section "contract", in relation to the territories to which the Transfer of Property Act, 1882 (4 of 1882), does not extend, means a contract in writing.

28 Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed—(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require

(2) where a contract is rescinded under sub-section (1), the court—

(*a*) shall direct the purchaser or the lessee, if he has obtained possession of the property under the

contract, to restore such possession to the vendor or lessor, and

(*b*) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(*3*) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (*1*), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely —

(*a*) the execution of a proper conveyance or lease by the vendor or lessor,

(*b*) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(*4*) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be

(*5*) The costs of any proceedings under this section shall be in the discretion of the court.

29 Alternative prayer for rescission in suit for specific performance —A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled, and the court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

30 Court may require parties rescinding to do equity — On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to restore, so far as may be, any benefit which he may have received from the other party and to make any compensation to him which justice may require

CHAPTER V

CANCELLATION OF INSTRUMENTS

31 When cancellation may be ordered —(*1*) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable, and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(*2*) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

32. What instruments may be partially cancelled.—Where an instrument is evidence of different rights or different obligations, the court may, in a proper case, cancel it in part and allow it to stand for the residue.

33. Power to require benefit to be restored or compensation to be made when instrument is cancelled or is successfully resisted as being void or voidable —(*1*) On adjudging the cancellation of an instrument, the court may require the party to whom such relief is granted, to restore, so far as may be any benefit which he may have received from the other party and to make any compensation to him which justice may require

(2) Where a defendant successfully resists any suit on the ground—

(a) that the instrument sought to be enforced against him in the suit is voidable, the court may if the defendant has received any benefit under the instrument from the other party, require him to restore, so far as may be, such benefit to that party or to make compensation for it,

(b) that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract under section 11 of the Indian Contract Act, 1872 (9 of 1872), the court may, if the defendant has received any benefit under the agreement from the other party, require him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby

CHAPTER VI

Declaratory Decrees

34. Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee

35 Effect of declaration.—A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees

PART III

PREVENTIVE RELIEF

CHAPTER VII

INJUNCTIONS GENERALLY

36. Preventive relief how granted —Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual.

37 Temporary and perpetual injunctions —(1) Temporary injunctions are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure 1908. (5 of 1908)

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit, the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER VIII

PERPETUAL INJUNCTIONS

38. Perpetual injunction when granted.—(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely —

(*a*) where the defendant is trustee of the property for the plaintiff,

(*b*) where there exists no standard for ascertaining the actual damage caused, or likely to be caused by the invasion;

(*c*) where the invasion is such that compensation in money would not afford adequate relief;

(*d*) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

39. Mandatory injunctions.—When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

40. Damages in lieu of or in addition to, injunction —(1) The plaintiff in a suit for perpetual injunction under section 38, or mandatory injunction under section 39, may claim damages either in addition to, or in substitution for, such injunction and the court may, if it thinks fit, award such damages.

(2) No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint.

Provided that where no such damages have been claimed in the plaint, the court shall, at any stage of the proceeding, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.

(3) The dismissal of a suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach

41. Injunction when refused —An injunction cannot be granted—

(*a*) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings.

(*b*) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought.

(*c*) to restrain any person from applying to any legislative body.

(*d*) to restrain any person from instituting or prosecuting any proceeding in a criminal matter.

(*e*) to prevent, the breach of a contract the performance of which would not be specifically enforced.

(*f*) to prevent on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance.

(*g*) to prevent, a continuing breach in which the plaintiff has acquiesced.

(*h*) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust,

(*i*) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court,

(*j*) when the plaintiff has no personal interest in the matter.

42. Injunction to perform negative agreement —Notwithstanding anything contained in clause (*e*) of section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that

the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement

Provided that the plaintiff has not failed to perform the contract so far as it is binding on him.

43. Amendment of Act 10 of 1940.—In section 32 of the Arbitration Act, 1940, after the words " nor shall any arbitration, agreement or award be ", the word "enforced" shall be inserted.

44. Repeal.—The Specific Relief Act, 1877 (1 of 1877), is hereby repealed.

M. N. KAUL,
Secretary.

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